

# Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Applications of )  
Howard B. Dolgoff )  
Mark and Renee Carter )  
For Construction Permit for a New )  
FM Station on Channel 292A in )  
Miramar Beach, Florida )

93-178  
File No. BPH-911223ME

File No. BPH-911224MD  
~~93-178~~

To: Administrative Law Judge  
John M. Frysiak

## OPPOSITION TO PARTIAL MOTION FOR SUMMARY DECISION AND COUNTERMOTION FOR SUMMARY DECISION

Applicants Mark and Renee Carter ("the Carters"), pursuant to Section 1.251(b) of the Commission's rules, 47 C.F.R. Section 1.251(b), hereby oppose Howard B. Dolgoff's ("Dolgoff's") Motion for Partial Summary Decision served herein on July 12, 1993, and in response seek summary decision against Dolgoff.

As stated in detail in the Carters' contemporaneously served Contingent Petition to Enlarge Issues, Dolgoff's application as amended specifies a site at coordinates 30° 23' 31" North Latitude by 86° 18' 25" West Longitude. This site is not, and at the time of Dolgoff's amendment and site certification, was not reasonably available because the site is not on property of the person who Dolgoff certified gave him reasonable assurance of availability. In his Motion for Partial

Summary Decision, Dolgoff states that he has received an FAA determination of no hazard with respect to his amended site (i.e., with respect to the site that apparently is not available to him). There is, therefore, a material question of fact as to whether Dolgoff has obtained FAA approval as to a relevant site. It is established that "summary decision may be granted only if the basic facts are undisputed." Atlantic City Community Broadcasting, Inc., FCC 93-335, MM Docket No. 88-433 at para. 34 (released July 9, 1993). Accordingly, summary decision in favor of Dolgoff would be premature, or moot, and should be denied.

Moreover, Dolgoff did not have reasonable assurance of the availability of his site at the time he filed his May 1992 amendment. His application therefore was, at the end of the amendment as of right period, "patently not in accordance with the FCC rules, regulations, or other requirements." This defect cannot be cured by amendment. Webster-Fuller Communications Associates, 65 RR 2d 1068 (Rev. Bd. 1988).<sup>1/</sup> Dolgoff's application should therefore be summarily denied. The Carters' application should thereupon immediately be granted.

WHEREFORE, it is respectfully requested that Dolgoff's instant Motion for Partial Summary Decision be denied, that the

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<sup>1/</sup> See also the Carters' contemporaneously filed Contingent Motion to Enlarge Issues at 5 and note 4.

the Carters' instant Countermotion for Summary Decision against Dolgoff be granted, that Dolgoff's application be denied, and that the Carters' application be granted.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Frank J. Martin, Jr.", with a large, stylized flourish extending to the right.

Frank J. Martin, Jr.  
For Mark and Renee Carter

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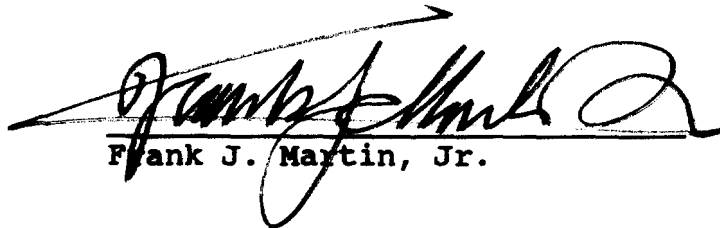
CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of July, 1993, a copy of the foregoing Opposition to Motion for Partial Summary Decision and Countermotion for Summary Decision has been served by U.S. mail, postage paid, upon the following:

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